when he is a confederate in illegality, although when he is innocent he escapes only when the plaintiff's illegality is a cause of the injury. The law-breaking defendant should not be treated more leniently than the law-abiding one, yet that is the effect of this rule. It would be more just to apply the test of causation in all cases, whether the defendant be a stranger or a confederate.

The rule on which the case in question was decided may also be attacked on a broader ground. The basis of all these rules is supposed to be public policy. The courts say they will not grant redress to a man who must come before them as an admitted wrongdoer. It seems just that a wrongdoer whose wrongful act is a cause of the injury, should be barred. When, however, the law goes farther, and denies a plaintiff redress simply because he and the man who injured him were engaged at the time in a violation of law, it seems to be using the civil law for punitive purposes. Nor is there any sufficient reason for creating an exception to the general rule that all citizens shall have access to the courts. On the whole, therefore, the rule is deemed to have no real basis in public policy. The attitude of the Iowa court,[5] which refuses to recognize any such rule, seems more commendable.

RIGHT TO SUE AS A CONSTITUTIONAL PRIVILEGE. — The Supreme Court of the United States has several times said, by way of *dictum*, that Art. 4, § 2 of the Constitution, providing that "a citizen of one state shall be entitled to the privileges and immunities of citizens in other states," protects the right of a citizen of one state to maintain actions of every kind in the courts of another.[1] The Supreme Court has never actually decided the point; but its *dicta* have been made the basis of two decisions[2] that a court may never refuse to retain jurisdiction on account of a plaintiff's non-residence. On the other hand these *dicta* are tacitly rejected by a recent New York case. The plaintiff was injured in Connecticut by the defendant's automobile. Both parties residing in Connecticut, the New York court refused to retain jurisdiction. *Collard* v. *Beach*, 81 N. Y. App. Div. 582.

The question which has occasioned this conflict is also involved in a consideration of the constitutionality of the statutory provisions in New York and other code states restricting actions by non-residents against foreign corporations. The courts of New York[3] and South Carolina[4] have overruled objections to the constitutionality of such provisions on the short ground that they discriminate, not between citizens and aliens, but between residents and non-residents. This argument, if sound, would also support the principal case. Its soundness depends upon whether in the statutory provisions in question residence is used in the sense merely of continuous bodily presence. The word may rightly be interpreted in this popular, rather than in its legal, sense in statutes whose object is to provide a substi-

---

[5] Gross *v.* Miller, *supra.*

[1] See Ward *v.* Maryland, 12 Wall. (U. S.) 418, 430; Miller, J., in Slaughter-house Cases, 16 Wall. (U. S.) 36, 76, quoting Washington, J., in Corfield *v.* Coryell, 4 Wash. (U. S., C. C.) 371, 380.

[2] Cofrode *v.* Gartner, 79 Mich 332; Eingartner *v.* Ill. Steel Co, 94 Wis. 70.

[3] Robinson *v.* Oceanic Steam Nav. Co., 112 N. Y. 315.

[4] Central R. R. Co. *v.* Georgia, etc., Co., 32 S. C. 319.

tute for process, such as the requirement that non-residents give security for costs.[5] But the New York rule,[6] supported by the great weight of authority,[7] is that where residence is prescribed "as a qualification for the enjoyment of a privilege" it must be interpreted to mean domicile. And domicile is the only test of citizenship in one state of the Union rather than another. "A citizen of the United States residing in any state of the Union," says Chief Justice Marshall,[8] "is a citizen of that state," and the Fourteenth Amendment bears him out. The distinction of the New York and South Carolina courts between "resident" and "citizen" would, therefore, seem to be merely verbal, and insufficient to support their decisions.

These decisions and the principal case may, however, be supported on a broader ground. In the case of McCready *v.* Virginia,[9] the constitutionality of a statute forbidding non-residents to take oysters from Virginia waters was in question. In sustaining the statute, the Supreme Court of the United States declared that, to come within the meaning of Art. 4, § 2, a privilege must be "in its nature fundamental, belonging of right to the citizens of all free governments"; and that the right to fish in Virginia waters is not such a privilege, belonging, as it does, to a citizen of Virginia by virtue, not of general citizenship, but of citizenship confined to a particular locality. The same is true of many other "privileges and immunities" to which the constitution has never been thought to apply, such as the right to vote in a particular state, or to use its public schools. So of the right to sue non-residents in state courts. The privilege to seek redress in the courts is fundamental; but the right to seek redress in one particular set of courts is an incident of local, not of general, citizenship, and seems, therefore, not to differ from the right in question in McCready *v.* Virginia. And if the question were presented to the Supreme Court, its decision, not its *dicta*, would probably prevail.

RECENT CASES.

ADVERSE POSSESSION — GAINING OF TITLE BY THE GOVERNMENT. — The United States bought land at an administrator's sale and continued in possession, openly using the land for a cemetery, during the period prescribed by the statute of limitations. The sale was later found to have been void, and an action to try title was brought against the defendant, who had derived his title from the United States. *Held*, that the defendant has a valid title, since the United States had acquired title by adverse possession. *City of El Paso* v. *Ft. Dearborn Nat. Bank*, 74 S. W. Rep. 21 (Tex., Sup. Ct.).

Adverse possession carries with it a right in the land, good against all the world except the true owner. Unless the true owner asserts his right within the period of the statute of limitations, he is debarred, and the occupant's title becomes complete. Since no action lies against the sovereign, it has been laid down that the statute will not operate in favor of the government. *San Francisco Sav. Union* v. *Irwin*, 28 Fed. Rep. 708. As a rule of law, however, this affords an unsatisfactory test, for in many cases the owner has a means of recovering his land. It is inapplicable where the government is by statute liable to suit. *Baxter* v. *State*, 10 Wis. 454. Often, as in

---

[5] See Haggart *v.* Morgan, 5 N. Y. 422.
[6] People *v.* Platt, 117 N. Y. 159.
[7] Jacob, Dom. § 75, and cases cited.
[8] Gassies *v.* Ballon, 6 Pet. (U. S.) 761.
[9] 94 U. S. 391.